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REMARKS

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of two months of the period for response to the Office Action. Authorization to charge the prescribed fee to our deposit account is enclosed.

The Examiner withdrew the finality of the previous rejection in view of a newly discovered reference to "Pickford". After consultation with the Examiner, it was clarified that the Pickford reference is U.S. Patent No. 6,261,625.

Claim 1 has been amended in the interests of expedited prosecution. Claim 1, directed to a snack food product comprising a shaped core of a coherent mass of scrambled eggs, enrobed in an outer batter coating, has been amended to recite that the shaped core includes at least one food grade binder to provide structural integrity to the core, as previously specified in claim 5. In addition, claim 1 has been amended to recite that the at least one food grade binder is employed in a weight ratio of food grade binder to egg of 0.05:1 to 0.15:1, as specified on page 2, paragraph 11.

Claim 1 has been further amended to recite that the at least one food grade binder consists of liquid albumen in an amount of about 6 to about 7 wt% of the core and gelatin is an amount of about 0.5 to about 1 wt%. This combination and the amounts is recited in original claim 6, now deleted. The food grade binder is specified as consisting of the two components.

The Examiner rejected claims 1,2,5,7 and 15 under 35 U.S.C. 102(b) as being anticipated by Rapp et al, for the reasons specified in the Office Action of May 16, 2005. Since claim 1 has been limited to incorporate the subject matter of claim 6 and claims 2, 7 and 15 are dependent, direct or indirectly, on claim 1, it follows that the rejection no longer applies and thus the rejection of claims 1,2,5,7 and 15, insofar as they remain in the application and in their amended form, under 35 U.S.C. 102(b) as being anticipated by Rapp et al. should be withdrawn.

The Examiner rejected claims 1,2,5,7, 15 and 17 under 35 U.S.C. 102(b) as being anticipated by Pickford. This rejection did not include claim 6, the features of which are now incorporated in claim 1. Since claims 2, 7, 15 and 17 are dependent on amended claim 1, it follows that the rejection no longer applies. Accordingly, the rejection of claims 1,2,5,7 and 15 under 35 U.S.C. 102(b), insofar as they remain in the application and in their amended form, as being anticipated by Pickford should be withdrawn.

The Examiner rejected claims 3, 4, 6, 8, 9, and 16 under 35 U.S.C. 103(a) as been unpatentable over Rapp et al for the reasons given in the Office Action of May 16, 2005. Claims 3, 4, 8, 9 and 16 are dependent on amended claim 1 which, as noted above, has been revised by inclusion of the features of claim 6 and other features therein

In the Office Action of May 16, 2005, the Examiner indicated that the rejections were being retained for the same reasons as advanced in the Office Action of October 5, 2004.

In the Office Action of October 5, 2004, the Examiner indicated:

"Rapp et al discloses a food product comprising a mass of scrambled eggs (including albumen), spices/condiments (i.e. seasoning), and gelatin (col. 3, lines 34-65; col. 4, lines 47-50; col. 5, lines 8 to 25) wherein said mass is coated with a batter coating which include breading (col. 5, lines 67 to col. 6, line 16) and a predusting dry binder mixture (col. 5, lines 36 to 40)."

As described above, claim 1 of this patent application defines a snack food product comprising a shaped core of a coherent mass of scrambled eggs enrobed in an outer batter coating. Thus, essential to applicants invention is that the shaped core is formed by scrambled eggs. The term "scrambled eggs" refers to eggs cooked by a particular method (scrambling), in which egg yolks and whites are mixed together, optionally along with milk, and cooked while stirring.

By way of contrast, the Rapp reference describes a freeze-thaw stable egg product and a process of preparing the product. The product comprises discrete pieces of egg bound together and covered with a batter coating. As clearly described in col. 2, lines 16 to 21 of Rapp, the freeze-thaw stable egg product internally has the

appearance of scrambled eggs, but nowhere in the reference is there described a product which is scrambled eggs.

As can be seen from the procedure described in Rapp, an egg mixture and water-binding carbohydrates are cooked sufficiently to coagulate the albumen content of the egg. The carbohydrates are used in sufficient quantity effective to render the eggs freeze-thaw stable when cooked. The cooked egg mixture is then subdivided into discrete pieces, the discrete pieces are coated with a binder in an amount effective to hold the discrete pieces together, and the binder-water discrete pieces are shaped into a desired portion. The desired portion then is coated with batter. (see, for example, col. 3, lines 5 to 15).

Further details of cooking methods that Rapp contemplate are provided in col. 4, lines 35 to 43:

"The egg mixture is then cooked in any manner suitable for coagulating the albumen sufficiently to provide a desirable firm texture without any significant drying or discoloration. One method which has been found to be acceptable is to pour the egg mixture into plastic bags or sausage casings and then either immerse these in boiling water or place them in a steam oven for a period of time sufficient to provide the desired degree of cooking."

It is clear that none of the procedures described here involves the production of scrambled egg, but rather a coagulated coherent egg mass. This is made abundantly clear in the succeeding paragraph, wherein it is stated:

"After the egg mixture has been cooked, it is preferably cooled... prior to subdividing the cooked egg mixture into discrete pieces. The cooked egg mixture can be subdivided in any manner suitable to provide pieces which, in the final product, give an appearance reminiscent of scrambled eggs." (emphasis added).

Thus, Rapp does not describe an egg product having a coherent mass of scrambled eggs, as required by claim 1.

In the Office Action of May 16, 2005, the Examiner stated:

".... although the method by which the instant product is achieved may differ, the final product contains a material that has the appearance of scrambled eggs and, therefore, contains eggs which are essentially scrambled eggs as called for in the final product." (emphasis added).

As discussed above, the term "scrambled eggs" describes an egg product produced by a specific cooking method. Rapp's subdivided coagulated egg mass is not such a product.

With respect to claims 2, 7 and 15, these claims are dependent directly or indirectly on claim 1. With respect to claim 2, it is conceded that Rapp discloses breading the outer batter coating of the structure.

Claim 7 is dependent on claim 1. While Rapp discloses the possibility of the inclusion of seasonings in the product, there is no disclosure of the use of seasonings in combination with the specific binder combination specified in claim 1.

Claim 15 is dependent on claim 2 and specifies a predust on the egg core, a batter on the predust and breading on the batter. While Rapp describes battering and breading in col. 5, lines 62 to col. 6, line 15, there is no mention therein of the utilization of a predust.

As discussed earlier, claim 1 now specifies that the binder used to provide structural integrity to the core consists of the recited combination of liquid albumen and gelatin in specified amounts.

While Rapp mentions gelatin as a binder, it does not show the combination of liquid albumen with gelatin utilizing the recited quantities. The remaining claims are dependent, directly or indirectly, to claim 1.

Accordingly, it is submitted that claims 3, 4, 6, 8, 9 and 16, insofar as they remain in the application and in their amended form, can no longer be considered to be open to rejection under 35 U.S.C. 103(a) and hence the rejection should be withdrawn.

The Examiner rejected claims 10 to 14 under 35 U.S.C. 103(a) as being unpatentable over Rapp et al taken together with Heick et al for the reasons set out in the previous action of May 15, 2005.

Claim 10 is dependent on claim 9 and defines the production assistance ingredients of claim 9. Claim 11 is dependent on claim 10 and defines the proportions of the production assistance ingredients of claim 10. Claim 12 is dependent on claim 10 and recites that the scrambled egg core additionally contains particulates.

Claim 13 is dependent on claim 12 and recites that the particulates are cheese particulates in a specific amount. Claim 14 also is dependent on claim 12 and recites that the particulates are bacon pieces present in a specific amount.

Heick et al describes an egg and cheese food which comprises a continuous phase of cheese-containing material having discrete particles of cooked egg-containing material distributed therethrough, a quite different product from the present invention. In the Office Action of October 5, 2004, the Examiner explains the reliance on Heick et al:

"..... it is known to employ cheese, skim milk and citric acid in scrambled eggs and other egg recipes as taught, for example in Heick et al. (see Examples and claims)".

In the Office Action of May 16, 2005, the Examiner discussed applicants' submissions with respect to Heick et al:

"Applicants argues further that Heick et al teaches a product which is different from that of instant invention... Heick was applied in combination with Rapp et al, wherein Rapp et al is relied on for disclosing most of the invention. Heick et al was relied on for teaching the addition of certain ingredients in scrambled egg or scrambled egg products...."

As already demonstrated, Rapp et al is concerned with quite a different product from that claimed herein.

While a variety of materials may have been added to various egg recipes, it is submitted that the disclosures of Heick et al in this regard, do not sufficiently modify the teachings of Rapp et al to provide a scrambled eggs based snack food product which is a combination of the features now claimed.

Accordingly, it is submitted that the rejection of claims 10 to 14 under 35 U.S.C. 103(a) as being unpatentable over Rapp et al taken together with Helck et al should be withdrawn.

The Examiner rejected claims 3, 4, 6, 8, 14, and 16 under 35 U.S.C. 103(a) as being unpatentable over Pickford.

The Pickford reference is concerned with the provision of microwaveable food products which comprises a substrate impregnated with a stabilizer compound which is adapted to increase in viscosity when irradiated in a microwave oven (see Abstract).

As specified in col. 2 of Pickford, the stabilizer composition comprises a reversibly thermogelling, water binding combination of starches, gums and optionally proteins. Preferred compositions include cellulose gum, hydrocolloid and protein isolate.

It is apparent, therefore, that the reference employs combinations of materials formulated to provide the viscosity increase upon microwaving. The reference does not suggest the specific combination of food grade binders specified in applicants claim in the quantities specified.

The Examiner refers, in the Office Action, to Example 14. This Example describes the provision of a Breakfast Brunch Bar. The stabilizer of Example 5, comprising three ingredients, was mixed with water in a high shear mixer. Pasteurized scrambled egg is placed in a tumble mixer and the stabilizer mixture added to it. Tumbling was continued and the stabilizer of Example 6 was added together with polydextrose and cooked bacon. There are now five different components as well as polydextrose. The mixture was tumbled until it stiffened, chilled, and formed into a shape for coating.

It is submitted that the combination of components described in this reference does not render obvious the specific combination of two food binders now specified in claim 1 in the specified amounts.

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Accordingly, it is submitted that the rejection of claims 3, 4, 6, 8 to 14 and 16 as being unpatentable under 35 U.S.C. 103(a) over Pickford, should be withdrawn.

The Examiner rejected claim 18 and 19 under 35 U.S.C. 103(a) as being unpatentable over either one of Rapp et al or Pickford taken together with either one of EP 11552627 or WO 02/080703.

Claim 18 refer to the egg core being formed from eggs containing added omega-3 fatty acids while claim 19, dependent on claim 18, refers to the amount of such omega-3 fatty acids present in the eggs. Claim 18 is dependent on claim 1.

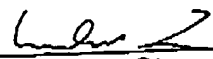
The Examiner relies on the cited secondary references for a teaching that eggs having increased amounts of omega-3 fatty acids are well known. The cited EP 1,155,627 describes an egg having a lipid fraction which is balanced in seeds and green plant type omega 6 and omega 3 fatty acids. The cited WO 02/080703 describes a liquid egg product in which omega-3 fatty acid is added to shelled eggs. The specific amount of omega-3 fatty acid recited in claim 19 is specifically described on page 2, paragraph [0008] of the cited WO 02/080703.

However, applicants rely for the patentability of claims 18 and 19 on the patentability of claim 1 over Rapp et al or Pickford, as demonstrated above.

Accordingly, it is submitted that the rejection of claims 18 and 19 under 35 U.S.C. 103(a) as being unpatentable over one of Rapp et al or Pickford taken together with either one of EP 11552627 or WO 02/080703, should be withdrawn.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,


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